Hearing Date and Time: **February 7, 2011 at 9:45 a.m. ET**
Objection Deadline: January 25, 2011 at 4:00 p.m. ET

KATTEN MUCHIN ROSENMAN LLP
Thomas J. Leanse
Dustin P. Branch
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400
Facsimile: (310) 788-4471

-and-

Adrienne W. Blankley
575 Madison Ave
New York, New York 10022
Telephone: (212) 940-8800
Facsimile: (212) 940-8776

Attorneys for The Prudential Insurance Company of America
And Caruso Affiliated

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
LOEHMANN'S HOLIDINGS, INC., et at.,	:	**Case No. 10-16077 (REG)**
Debtors.	:	**(Jointly Administered)**

COMBINED LIMITED OBJECTION OF CARUSO AFFILIATED AND THE PRUDENTIAL INSURANCE COMPANY OF AMERICA TO THE NOTICE OF FILING OF THE ASSUMED EXECUTORY CONTRACT AND UNEXPIRED LEASE SCHEDULE OF THE PLAN SUPPLEMENT AND DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The Prudential Insurance Company of America, as agent for Aventura Fashion Island, L.P., and Caruso Affiliated , as agent for CRM Properties, Inc. (individually, a "Landlord," and collectively, the "Landlords") hereby file this combined limited objection (the "Objection") to the Notice Of Filing Of The Assumed Executory Contract And Unexpired Lease Schedule Of The Plan Supplement (the "Plan Supplement") and Debtors' Second Amended Joint Plan of

Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan"),[1] and respectfully represent as follows:

I. BACKGROUND FACTS

1. Loehmann's Holdings, Inc., and it affiliated co-debtors (the "Debtors"), filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on November 15, 2010. The Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.[2]

2. The Debtors lease retail space (the "Premises") from the Landlords where they operate their stores as a tenant pursuant to unexpired leases of nonresidential real property (the "Leases") at the following shopping center locations (the "Centers"):

Caruso Affiliated	
Beverly Hills	Beverly Hills, CA
The Prudential Insurance Company of America	
Fashion Island	Miami, FL

3. The Leases are each a "lease of real property in a shopping center" as that term is used in Section 365(b)(3). *See* In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3d Cir. 1990).

4. On January 3, 2011, the Debtors filed the Plan. On January 5, 2011, the Court approved the Debtors' Disclosure Statement and set February 7, 2011 as the date for the hearing to confirm the Plan. On January 18, 2011, the Debtors filed the Plan Supplement that included contracts and leases that the Debtors intend to assume in connection with the conformation of their plan of reorganization. Exhibit 2 to the Plan Supplement includes the Leases, along with the proposed cure amount for each Lease (the "Cure Schedule"). The amounts set forth in the

[1] Terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement, Plan, the Plan Supplement, and accompanying documents.

[2] Unless otherwise specified, all statutory references to "Section" are to 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

Cure Schedule do not reflect all outstanding balances due and owing to Landlords under the Leases, and the proposed cure amounts do not account for accrued but unbilled charges which may come due in the future. Therefore, the cure amounts set forth by the Debtors must be modified to reflect the additional charges owing, as well as recognize the liability for accruing charges due under the Leases, as set forth herein.

II. THE DEBTORS' PROPOSED CURE AMOUNTS DO NOT PROVIDE FOR PAYMENT OF ALL OBLIGATIONS DUE UNDER THE LEASES

5. The Landlords' cure, as compared to the Debtors' cure is summarized below, and those charges comprising the Landlords' cure are more fully set forth in Exhibits A and B, which are attached hereto and incorporated into this Objection by this reference:

Landlord	**Center**	**Store No.**	**Debtors' Cure**	**Landlords' Cure[3]**
Caruso	Beverly Hills	30	$99,079.40	**$191,484.97**
Prudential	Fashion Island	56	$110,245.21	**$145,788.06**

6. In addition to the current outstanding rent and other monthly charges due under the Leases, in determining what the Debtors must pay as cure pursuant to Section 365(b), the charges referenced below must also be taken into consideration and paid by the Debtors, either as cure or when properly billed under the Leases.

i. Year-end adjustments and reconciliations

7. In addition to rent and related monthly charges, attorneys' fees, costs, and interest, some charges for which the Debtors bear responsibility under the Leases have not yet been reconciled and/or adjusted from pre-petition (or even post-petition) periods. By way of example, the Debtors occupy retail space at the Centers pursuant to triple-net leases, where they typically pay rent and related lease charges in advance for each month. The Debtors pay fixed minimum rent, along with a pro-rata share of expenses such as real property taxes, insurance, common area

[3] The Landlords' Cure does not include charges arising since the filing of this Objection, and the Landlords reserve the right to assert their right to payment (and amend this Objection to the extent necessary) for any amounts that come due under the Leases through the payment date of any cure by the Debtors.

maintenance ("CAM") fees, annual percentage rent, and the like. Certain charges, such as CAM and property taxes are estimated prospectively, billed to and paid by the tenant during the year, and then reconciled after year-end. The reconciliation compares the amounts estimated and paid against actual charges incurred at the respective Center. To the extent the estimated payments exceed actual charges, the result is a credit to the tenant. To the extent the estimated payments do not cover actual charges incurred under the Leases, the result is an additional amount (or debit) for which the tenant is liable. In some instances in this case, year-end reconciliations and adjustments for previous years for the Premises may not yet be complete (i.e. - year-end reconciliations and adjustments which accrued throughout 2010 may not have all been billed at this time, and year-end reconciliations and adjustments which are accruing for 2011 will not be billed until sometime in 2012). In other instances, certain charges may be paid in arrears, and cannot be calculated (in some cases) until a year or more after year-end. Since these accrued, but unbilled, charges are not yet due under the Leases, they do not create a current default that gives rise to a requirement to cure by the Debtors at this time.

8. Nevertheless, the Debtors continue to be responsible for all such accrued and accruing charges under the Leases, as and when they are billed under the Leases. Therefore, to the extent the Debtors assume the Leases, the Debtors must agree to pay these unbilled amounts for such Leases, as and when they come due under the Leases, regardless of whether the underlying charges relate to periods that pre-date the bankruptcy filing or the effective date of the assumption of the Leases through plan confirmation.[4]

---

[4] The Plan seeks authority for expansive releases and injunctions against claims that arise prior to plan confirmation. For the same reasons as set forth above, the Landlord objects to any waiver or injunction that would affect the obligations to satisfy unbilled reconciliations and adjustments that have accrued under the Leases prior to plan confirmation, but which have not yet been billed. The Debtors continue to be responsible for all such unbilled charges as they come due under the Leases, and the Debtors must continue to satisfy all charges due under the Leases, including charges which have not yet been reconciled and/or adjusted from pre-petition (or even post-petition) periods. The assumption of the Leases through plan confirmation cannot cut off the Landlord's right to recover unbilled charges that have accrued, or are accruing, under the Leases.

9. Finally, the Leases provide that the Debtors must indemnify and hold the Landlords harmless with respect to any existing claims which may not become known until after the assumption of the Leases, examples of which may include such claims as personal injuries at the Premises and damage to the Premises or Centers by the Debtors or their agents. Any order approving plan confirmation and the assumption of the Leases must provide that the assumption is pursuant to the terms of the Leases, including the continuation of all indemnification obligations, regardless of when they arose.[5] In the alternative, the Debtors must provide (by insurance or otherwise) that they can satisfy the indemnification obligations under the Leases for any such claims that relate to the period prior to plan confirmation.

ii. *Attorneys' fees, costs, and interest*

10. In addition, the Leases contain provisions for the recovery of attorneys' fees, costs, and interest in the event the Landlords are required to take legal action to protect their interests. The Debtors are obligated to cure all defaults under the Leases, and compensate the Landlords for their actual pecuniary losses as a result of defaults under the Leases. *See* 11 U.S.C. § 365(b)(1)(A) and (B). The principle is well-recognized. In re LCO Enterprises, 12 F.3d 938, 941 (9th Cir. 1993); Elkton Associates v. Shelco Inc. (Matter of Shelco), 107 B.R. 483, 487 (Bankr. D. Del. 1989) (debtors allowed to assume lease provided it cured *all pre-petition defaults*).

11. In assuming the Leases, the Debtors take the Leases *cum onere*, that is, subject to existing burdens. The Debtors cannot, on the one hand, assume the favorable portions of the Leases and, on the other hand, reject the unfavorable provisions of the same Leases. In re Washington Capital Aviation & Leasing, 156 B.R. 167,172 (Banks. E.D. Va. 1993). If forced to continue in the performance of the Leases, the Landlords are entitled to the full benefit of the bargain under their Leases with the Debtors. *See* Matter of Superior Toy and Mfg. Co., Inc., 78 F.3d 1169 (7th Cir. 1996). The "full benefit of the bargain" principle has been held to require

[5] Any ability to assume the Leases is subject to the protections provided by Section 365(b)(1) and (3). Therefore, any assumption be in accordance with all provisions of the Leases.

payment of interest. "The cure of a default under an unexpired lease pursuant to 11 U.S.C. § 365 is more akin to a condition precedent to the assumption of a contract obligation than it is to a claim in bankruptcy. One of the purposes of Section 365 is to permit the debtors to continue in a beneficial contract; provided, however, that the other party to the contract is made whole at the time of the debtor's assumption of the contract." In re Entertainment, Inc., 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (citation omitted; bankruptcy court allowed interest at 18%). Interest on pre-petition lease charges continues to run from the filing of the Debtors' petition and must be paid as a condition of the assumption of the Leases. See In re Skylark Travel, Inc., 120 B.R. 352055 (Bankr. S.D. N.Y. 1990). Interest calculations are therefore not cut short by the automatic stay, and payment of such interest is required to fully compensate Landlords for the Debtors' default under the Leases, and thus to properly assume the Leases. Finally, post-petition interest is allowable where such interest is provided for under the terms of the Leases. Cukierman v. Uecker (In re Cukierman), 265 F.3d 846, 853 (9th Cir. 2001).

12. Attorneys' fees and costs are also proper components of a cure claim, and the Debtors must satisfy these lease charges as part of the assumption of the Leases. Attorneys' fees and costs incurred in enforcement of the covenants, obligations, and conditions of a lease must be paid as a condition of the assumption of the Leases. Entertainment, Inc., 223 B.R. at 152 (citation omitted). There is no logical distinction for purposes of Section 365 between attorneys' fees incurred in connection with pre-petition defaults and fees incurred with post-petition defaults. Id. 154. The fact that a landlord uses bankruptcy procedures to enforce a lease should not preclude recovery of attorneys' fees and costs for such enforcement activity (particularly where the Bankruptcy Court is the exclusive forum where the landlord can obtain any relief, being foreclosed from state court relief by the automatic stay). Id., see also, In re Crown Books Corporation, 269 B.R. 12 (Bankr. D. Del. 2001) (Landlords' fees and costs are recoverable as a component of cure under 11 U.S.C. § 365(b)(1)); Urban Retail Properties v. Loews Cineplex Entertainment Corporation, et al., 2002 WL 5355479 (S.D.N.Y. Apr. 9, 2002) (where lease "provides for recovery of attorneys' fees and interest, their receipt deserves the same priority

under Section 365(d)(3) as any of the debtors' other obligations that arise postpetition . . . ."); Three Sisters Partners, L.L.C. v. Harden (In re Shangra-La, Incorporated), 167 F.3d 843, 850 (4th Cir. 1999). The Supreme Court has upheld the enforceability of such attorneys' fees clauses, ruling that pre-petition attorneys' fee clauses were enforceable with respect to issues peculiar to bankruptcy law. Travelers Casualty & Surety Co. Of America v. Pacific Gas & Electric, 127 S. Ct. 1199, 1206 (2007).

13. At this time, Landlords can only estimate the total attorneys' fees that will be incurred in connection with each Lease because these amounts will continue to accrue at least through any plan confirmation hearing that includes a request to assume the Leases. Landlords will provide the Debtors with the most current information on attorneys' fees at the time of such hearing.

iii. *The cure amounts serve only as estimates*

14. The cure amounts set forth herein represent only the current amounts due and owing under the Leases. As a practical matter at this juncture, the best the Landlords can do is provide the most accurate information presently available regarding the cure amounts payable by the Debtors, but the Landlords reserve the right to unilaterally amend the cure amounts as necessary to include any additional or presently unknown sum of money for any reason, including but not limited to subsequent rent defaults, attorney fees, costs, interest, and year-end adjustments and reconciliations. There is no basis to impose upon the Landlords the equivalent of an administrative bar date without the ability to recover lease charges to which they are entitled under the Leases.

III. THE INJUNCTION PROVISIONS OF THE PLAN ARE OVERBROAD

15. The injunction provisions referenced in Article IX(I) of the Plan are overbroad and should be revised. Through the injunction provisions, the Debtors improperly seek to deprive Landlords of their rights to setoff and recoupment. To the extent any claim objections or preference actions are prosecuted against the Landlords following Plan confirmation, the Landlords should not be deprived of their rights to assert setoffs or exercise recoupment, or

limited in their ability to enforce these rights. The Debtors fail to provide any authority for depriving the Landlords of such rights, and Landlords submits that Debtors should not be permitted to deprive Landlords of these rights. *See* Carolco Television Inc. v. Nat'l Broadcasting Co. (In re De Laurentiis Entertainment Group Inc.), 963 F.2d 1269 (9th Cir. 1992), *cert denied* 506 U.S. 918 (1992) (setoff rights survive plan confirmation); *see also* In re Luongo, 259 F.3d 323, 333 (5th Cir. 2001); *see also*, Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV, 209 F.3d 252, 257 - 261 (3rd Cir. 2000) (recoupment defense survives free and clear sale of debtor's assets).

16. The Debtors also need to adequately address the fact that Landlords' unbilled but accrued claims for year-end reconciliation payments must survive Plan confirmation. As set forth above, certain year-end adjustments and reconciliations (as well as such charges for the pre-confirmation portion of 2011) will not likely be billed prior to Plan confirmation. The Plan does not protect the Landlords' right to such payment because it seeks broad releases, waivers and injunctions for any claims existing as of the Effective Date that could arguably be used to try to enjoin Landlords from payment of these legitimate lease claims. See Plan at Article IX. Any attempt to limit the liability of the Debtors for any such charges is contrary to the principles underlying Section 365, and cannot be allowed. The Debtors should clarify that nothing in the Plan will act to bar Landlords from collecting such year-end reconciliations and adjustments, and preserve the Landlords' right to assert a claim for such amounts, regardless of whether those charges accrue, or are billed, before or after Plan confirmation.

IV. JOINDER IN OBJECTIONS BY OTHER LANDLORDS

17. To the extent not inconsistent herewith, the Landlords hereby join in the objections raised by other landlords.

V. CONCLUSION

In order to protect the interests of the Landlords, the cure amounts should be established (subject to adjustment by the Landlords) as set forth herein, the waivers, releases and injunctions set forth in the Plan should be modified to protect Landlords as set forth above, and the Court should grant such other relief that the Court finds just and proper.

Dated: January 25, 2011

KATTEN MUCHIN ROSENMAN LLP
Attorneys for The Prudential Insurance Company of America and Caruso Affiliated

By: /s/ Adrienne W. Blankley

Thomas J. Leanse
Dustin P. Branch
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Phone: (310) 788-4400
FAX: (310) 788-4471

Adrienne W. Blankley
575 Madison Ave
New York, New York 10022
Phone: (212) 940-8800
FAX: (212) 940-8776

SCHEDULE A

The Macerich Company		
Store No. 95345	Creekside Crossing	Redmond, WA
Store No. 97179	Towne Mall	Elizabethtown, KY
RREEF Management Company		
Store No. 94104	Crossroads Center	Falls Church, VA
Store No. 17415	Deerfield Village	Deerfield, IL
Store No. 48619	Villas On Guadalupe	Austin, TX
West Valley Properties, Inc.		
Store No. 4033	Glendale Center	Glendale, AZ
Store No. 4055	The Boardwalk at Anderson Springs	Chandler, AZ
Jones Lang LaSalle Americas, Inc.		
Store No. 12464	Windsor Commons Shopping Center	Jacksonville, FL
Store No. Unknown	Clifton Commons	Clifton, NJ
Watt Management Company		
Store No. Unknown	North Mesa Plaza 1	North Las Vegas, NV
Store No. Unknown	Southport Town Center	West Sacramento, CA
Edens & Avant		
Store No. 12268	Barclays Square	Largo, FL
Store No. 51024	Cascades Marketplace	Sterling, VA
Store No. 13252	Dawson Village	Dawsonville, GA
Store No. 42160	Gettysburg Marketplace	Gettysburg, PA
Store No. 24127	Neelsville Village Center	Germantown, MD
Store No. 12476	North Delray Commons	Delray Beach, FL
Madison Marquette		
Store No. 6359	La Jolla Village Center	La Jolla, CA
Store No. 6668	Plaza Paseo Real	Carlsbad, CA
Alecta Real Estate Investments, LLC		
Store No. 9022	Somerset Square	Glastonbury, CT

Exhibit A. Cure Amounts for Loehmann's Lease
for Space in Burton Place, Los Angeles Held by CRM Properties, Inc.

Location Burton Place, Los Angeles

Attorney Fees[3] $6,063.00

Rent and Charges:	Landlord's Cure Calculation[1]		Interest[2]	Landlord's Total Cure Amount
11/1/2010	$13,554.80	Pro-rated CAM (11/1/10-11/14/10)	$319.37	$13,874.17
11/1/2010	$3,185.93	Pro-rated Media Fund	$75.07	$3,261.00
11/1/2010	$82,054.00	Pro-rated Base Rent	$1,933.33	$83,987.33
11/1/2010	$284.67	Pro-rated Storage Charge	$6.71	$291.38
	$84,085.18	1st Installment Real Estate tax (7/1/10-12/31/10)	$0.00	$84,085.18
1/1/2011	($77.09)	Overpayment of Rent	$0.00	($77.09)
			$0.00	$0.00
	$183,087.49		**$2,334.48**	**$185,421.97**

Total Due: **$191,484.97**

1 Does not include charges for unbilled reconciliations and adjustments accrued under the specified lease.

2 Interest calculated at 10% from the due date through 01-25-11 (Objection Deadline).

3 Includes attorneys fees and costs accrued through 01-07-11. Landlord will supplement with final attorneys fee and cost amounts when available.

31555184_1.xls

Exhibit B. Cure Amounts for Loehmann's Lease

for Space in Loehmann's Fashion Island Held by Aventura Fashion Island, LP

Location Loehmann's Fashion Island **Attorney Fees**[3] $4,000.00

	Landlord's Cure Calculation[1]		Interest[2]	Landlord's Total Cure Amount
Rent and Charges:				
11/1/2010	$4,668.21	Pro-rated Operating Cost (11/1/10-11/14/10)	$109.99	$4,778.20
11/1/2010	$326.77	Pro-rated Sales Tax Operating Cost	$0.00	$326.77
11/1/2010	$38.19	Pro-rated Promo Fund	$0.90	$39.09
11/1/2010	$2.67	Pro-rated Sales Tax Promo Fund	$0.00	$2.67
11/1/2010	$15,065.68	Pro-rated Base Rent	$354.97	$15,420.65
11/1/2010	$1,054.59	Pro-rated Sales Tax Base Rent	$0.00	$1,054.59
	($0.74)	Miscellaneous Credit	$0.00	($0.74)
	($0.01)	Overpayment Credit for Rent	$0.00	($0.01)
	$101,816.07	2010 Real Estate Tax Year End Adjustment	$0.00	$101,816.07
	$31,077.78	2010 Operating Cost Year End Adjustment	$0.00	$31,077.78
	($12,727.01)	Partial Payment on 2010 Real Estate Tax Year End Adjustment	$0.00	($12,727.01)
			$0.00	$0.00
	$141,322.20		**$465.86**	**$141,788.06**

Total Due: **$145,788.06**

1 Does not include charges for unbilled reconciliations and adjustments accrued under the specified lease.

2 Interest calculated at 10% from the due date through 01-25-11 (Objection Deadline).

3 Includes attorneys fees and costs accrued through 01-07-11. Landlord will supplement with final attorneys fee and cost amounts when available.